

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

March 5, 2024

TRANSCRIPT EXCERPT - DIRECT and REDIRECT EXAM OF MARK FALZONE
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

UNITED STATES DEPARTMENT OF JUSTICE

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PRESENT:

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* * * * *

(Excerpt commenced at 9:43 a.m.)

(Jury seated at 9:43 a.m.)

THE COURT: Good morning, everyone.

ALL PARTIES: Good morning.

THE COURT: Welcome back. The record will reflect
that all our jurors are present.

I remind the witness he's still under oath.

And you may continue, Mr. Tripi.

MR. TRIPI: Thank you very much, Your Honor.

M A R K F A L Z O N E, having been previously duly called
and sworn, continued to testify as follows:

DIRECT EXAMINATION BY MR. TRIPI (CONT'D):

Q. Mr. Falzone, just to orient you from where we left off
yesterday, I'm going to pick it up from there. But I think
what you said as we broke yesterday, around 2014 or 2015, you

09:43AM 1 had a conversation where you agreed to help Mr. Serio and his
09:43AM 2 operations because your house was in foreclosure?
09:43AM 3 A. Yes, sir.
09:43AM 4 Q. Okay. For this jury, can you describe your conversation
09:44AM 5 that you had with Mr. Serio about coming -- becoming involved
09:44AM 6 in his drug organization?
09:44AM 7 A. Well, I was just basically complaining that my house was
09:44AM 8 in foreclosure. And he said he could help me if I helped him
09:44AM 9 unload packages.
09:44AM 10 Q. And where did you guys have this conversation?
09:44AM 11 A. At his house.
09:44AM 12 Q. Which house is that?
09:44AM 13 A. On Lebrun.
09:44AM 14 Q. Is that the big --
09:44AM 15 A. Yes.
09:44AM 16 Q. -- house on 697 Lebrun?
09:44AM 17 A. Yes.
09:44AM 18 Q. And when he said if you help me unload packages, did the
09:44AM 19 conversation continue from there? Did you ask him what do
09:44AM 20 you mean? Or --
09:44AM 21 A. He said he'd give me \$500 to help him basically dig
09:44AM 22 out -- the weed out of the packages.
09:44AM 23 Q. As best you can, can you explain the conversation as
09:44AM 24 close you remember it for the jury? The whole thing?
09:45AM 25 A. Well, I was -- he said, I have packages coming in that

09:45AM 1 need -- I need help with to get the marijuana out of, and
09:45AM 2 I'll pay you \$500 if you help me each time.

09:45AM 3 And I agreed. And then, I did it.

09:45AM 4 Q. Okay. During that conversation, did he tell you how the
09:45AM 5 marijuana would be coming into town?

09:45AM 6 A. No, he didn't, because he didn't know until it got there
09:45AM 7 what -- 'cuz it was different every time.

09:45AM 8 Q. Did he tell you where the marijuana was coming from?

09:45AM 9 A. Yes.

09:45AM 10 Q. What did he tell you in that regard?

09:45AM 11 A. He told me it was coming from Canada.

09:45AM 12 Q. Okay. And generally, did he tell you how the marijuana
09:45AM 13 was getting from Canada to Buffalo, New York?

09:45AM 14 A. It was being transported I know in trucks. He told me up
09:45AM 15 north, in New York State.

09:45AM 16 Q. So, was your job to unload the trucks?

09:46AM 17 A. No. Somebody -- somebody would -- the trucks would come
09:46AM 18 in, the packages would be stored in an air cooled facility,
09:46AM 19 and one of the Canadians would pick it up from there, and
09:46AM 20 then bring it to Ron.

09:46AM 21 Q. Okay. And at what point did you become involved in the
09:46AM 22 process?

09:46AM 23 A. When he told me where it was gonna go. And that's where
09:46AM 24 I would meet him.

09:46AM 25 Q. Okay. So, who was gonna be the one to tell you where to

09:46AM

1 meet?

09:46AM

2 A. Ron.

09:46AM

3 Q. And how much notice were you going to have to get ready

09:46AM

4 to unload this?

09:46AM

5 A. Very little. Same day, probably.

09:46AM

6 Q. Did Ron tell you how the -- how the marijuana would be

09:46AM

7 concealed in the trucks that were coming?

09:46AM

8 A. It was either mulch or wood pellets.

09:47AM

9 Q. What do you mean by that? Explain it for the jury.

09:47AM

10 A. Well, picture a 5 foot by 5 foot box filled with mulch.

09:47AM

11 And in the dead center of it, there would be weed stacked

09:47AM

12 like a brick house. And it was all covered in mulch.

09:47AM

13 And then we'd have to open the box and dig all the

09:47AM

14 packages of weed out from the mulch.

09:47AM

15 Q. So, is it your understanding the mulch or the wood

09:47AM

16 pellets were like a cover load?

09:47AM

17 A. Yes.

09:47AM

18 Q. Very shortly or within proximity to that discussion about

09:47AM

19 helping unload the marijuana, did you also have a discussion

09:47AM

20 about being supplied marijuana by Mr. Serio for you to sell?

09:47AM

21 A. Yes.

09:47AM

22 Q. Describe that conversation to the jury.

09:47AM

23 A. He said he could front me, you know, some weed if I found

09:47AM

24 people to sell it to.

09:47AM

25 Q. So you were gonna get \$500 to help unload marijuana when

09:48AM 1 it arrived in Buffalo; is that right?

09:48AM 2 A. Yes.

09:48AM 3 Q. And then he offered you marijuana to distribute?

09:48AM 4 A. Yes.

09:48AM 5 Q. And what did you say?

09:48AM 6 A. I said, okay, I'll start looking for people.

09:48AM 7 Q. And what was the -- what was the amount of marijuana that

09:48AM 8 you were looking to sell for Mr. Serio?

09:48AM 9 A. 5 pounds.

09:48AM 10 Q. How frequently?

09:48AM 11 A. I did it probably three or four times.

09:48AM 12 Q. In the matter of weeks, months?

09:48AM 13 A. No, months.

09:48AM 14 Q. And would Mr. Serio make you pay for the marijuana before

09:48AM 15 he gave it to you to sell? Or would he give it to on credit?

09:48AM 16 A. He would give it to me on credit.

09:48AM 17 Q. What's that called?

09:48AM 18 A. It's called a front.

09:48AM 19 Q. And describe fronting for the jury.

09:48AM 20 A. He would give me the weed, and then when I got the money

09:48AM 21 from the person that I was bringing it to, then I would just

09:48AM 22 bring him back the money.

09:48AM 23 Q. And how much per pound was Mr. Serio charging you?

09:48AM 24 A. How much per pound?

09:49AM 25 Q. Um-hum?

09:49AM 1 A. Anywhere from \$2,000 to \$2,400.

09:49AM 2 Q. Did that depend on the strain of marijuana it was?

09:49AM 3 A. Depending on how much he got it for and the strain, yes.

09:49AM 4 Q. And what were you selling it for per pound?

09:49AM 5 A. I would try to make at least \$100 to \$200 per pound.

09:49AM 6 Q. So between 500 and \$1,000 per every 5 pounds?

09:49AM 7 A. I would get about \$500, yes, to \$1,000 per 5 pounds.

09:49AM 8 Q. And how many times did he front you 5 pounds?

09:49AM 9 A. Like three or four.

09:49AM 10 Q. So we're talking about 15 to 20 pounds?

09:49AM 11 A. Yes.

09:49AM 12 Q. Did you ever distribute any other drugs that he supplied?

09:49AM 13 A. Negative.

09:49AM 14 Q. As time went on, did Mr. Serio ever ask you to travel

09:50AM 15 with him to assist in the acquisition of marijuana?

09:50AM 16 A. Yes.

09:50AM 17 Q. Before I ask you about that conversation, where did he

09:50AM 18 ask you to travel to?

09:50AM 19 A. New York City.

09:50AM 20 Q. Describe that conversation where he asked you to travel

09:50AM 21 to New York City to obtain marijuana.

09:50AM 22 A. He told me he would pay me \$1,000 if I followed him in my

09:50AM 23 car while he was driving his car.

09:50AM 24 Q. And did you agree to do that?

09:50AM 25 A. Yes, I did.

09:50AM 1 Q. Did he explain to you why he wanted you to follow him in
09:50AM 2 your car while he drove his?
09:50AM 3 A. Yes.
09:50AM 4 Q. What was that part of the discussion?
09:50AM 5 A. That if he was -- in case a trooper got behind him, I
09:50AM 6 would basically -- they would end up getting behind me, and I
09:50AM 7 could act erratically so they would pull me over and he could
09:50AM 8 keep going.
09:50AM 9 Q. And did you ultimately make that trip to New York City?
09:50AM 10 A. Yes I did.
09:50AM 11 Q. Did you drive your vehicle?
09:51AM 12 A. Yes, I did.
09:51AM 13 Q. Did Ron drive his vehicle?
09:51AM 14 A. Yes, he did.
09:51AM 15 Q. Who else drove with him?
09:51AM 16 A. Anthony Gerace.
09:51AM 17 Q. Is that Peter Gerace's younger brother?
09:51AM 18 A. Yes, it is.
09:51AM 19 Q. Describe that trip for the jury.
09:51AM 20 A. Well, we were at Ron's, and they were -- there was no
09:51AM 21 weed left, and they needed to get weed. So Ron called one of
09:51AM 22 his connections, one of the Canadians that were in New York
09:51AM 23 City. And Ron didn't have the money, so Anthony ended up
09:51AM 24 borrowing him \$80,000 to go pick up the weed.
09:51AM 25 Q. Now you said Anthony borrowed Ron the \$8,000. Did you

09:51AM 1 mean Anthony loaned Ron \$80,000, he gave him the money?

09:51AM 2 A. He borrowed him the money to get the weed, yes.

09:51AM 3 Q. So Anthony gave Ron \$80,000?

09:51AM 4 A. Yes.

09:51AM 5 Q. So that Ron could an afford the marijuana --

09:51AM 6 A. Yes.

09:51AM 7 Q. -- from the New York supply?

09:51AM 8 A. Yes. As long as Anthony got it at cost when he got back.

09:51AM 9 Q. And what do you mean by that? Explain that for the jury.

09:52AM 10 A. So Ron would not make any money off of Anthony for

09:52AM 11 lending him the money, he would give it to him what he paid

09:52AM 12 for it.

09:52AM 13 Q. And you were present for that discussion?

09:52AM 14 A. Yes, I was.

09:52AM 15 Q. Ron agreed to that?

09:52AM 16 A. Yes.

09:52AM 17 Q. And what time of day did you guys leave for New York

09:52AM 18 City?

09:52AM 19 A. I think it was at nighttime.

09:52AM 20 Q. So you left at night?

09:52AM 21 A. Yes.

09:52AM 22 Q. Describe that trip. What happened?

09:52AM 23 A. It was snowing. I started having car problems. That's

09:52AM 24 basically all I --

09:52AM 25 Q. Where did you go?

09:52AM 1 A. We went -- oh, we stopped at the casino.

09:52AM 2 Q. Where's that?

09:52AM 3 A. I forgot which casino it was. It was my first time.

09:52AM 4 Q. What part of New York City did you go to?

09:52AM 5 A. They left me at the hotel.

09:52AM 6 Q. What hotel?

09:52AM 7 A. I think it was a Holiday Inn. It was outside of New York

09:53AM 8 City. And then them two went to the city to go do whatever

09:53AM 9 transaction they had to do.

09:53AM 10 Q. Do you know, did they come back to the hotel?

09:53AM 11 A. Yes, they did.

09:53AM 12 Q. Did you see what they had acquired?

09:53AM 13 A. Yes.

09:53AM 14 Q. What did they acquire?

09:53AM 15 A. 30 pounds and about 100 Moonrock sticks.

09:53AM 16 Q. 30 pounds -- 30 pounds of what?

09:53AM 17 A. Marijuana.

09:53AM 18 Q. And you said 100 Moonrock sticks?

09:53AM 19 A. Yes.

09:53AM 20 Q. What are Moonrock sticks?

09:53AM 21 A. It's a pre-rolled joint rolled with hash, dipped in oil,

09:53AM 22 and then rolled in kief.

09:53AM 23 Q. If that something to sell that people smoke?

09:53AM 24 A. Yes.

09:53AM 25 Q. It includes marijuana?

09:53AM

1 A. Yes.

09:53AM

2 Q. And so on the ride back, what was your job?

09:54AM

3 A. Just to follow it up.

09:54AM

4 Q. And, again, remind the jury, what was your task? What

09:54AM

5 were you supposed to do?

09:54AM

6 A. Was to follow him closely, so that no troopers could get

09:54AM

7 behind him. And if a trooper did come around, for me to

09:54AM

8 drive erratically so that I would get pulled over and not

09:54AM

9 him.

09:54AM

10 Q. Okay. So you're like a decoy?

09:54AM

11 A. A decoy, yes, sir.

09:54AM

12 Q. And how much did you get paid for that trip?

09:54AM

13 A. Thousand dollars.

09:54AM

14 Q. Now, as you were becoming involved, agreeing to unload

09:54AM

15 packages, traveling to New York, selling marijuana, did you

09:54AM

16 become aware there were other people in Serio's organization

09:54AM

17 who were also involved helping unload marijuana, selling

09:54AM

18 marijuana, and also making trips to New York City with him?

09:54AM

19 A. Yes.

09:54AM

20 Q. Who were some of those other people?

09:54AM

21 A. Mike Masecchia, Anthony Gerace, and I wasn't aware of

09:55AM

22 anybody -- well, he didn't really tell me about anybody else.

09:55AM

23 Q. Was Mario Vacanti another person?

09:55AM

24 A. Oh, yes, Mario Vacanti was, yes, also. Sorry.

09:55AM

25 Q. Were there also people who hung out around Ron's house

09:55AM 1 and helped him unload packages from time to time?

09:55AM 2 A. Yes.

09:55AM 3 Q. Who were some of those people?

09:55AM 4 A. I wasn't told who, but I'm -- I know there was other

09:55AM 5 people.

09:55AM 6 Q. Did you have a friend named Mike Moynihan?

09:55AM 7 A. Yes.

09:55AM 8 Q. Did he stay at Ron's house?

09:55AM 9 A. Yes, he did.

09:55AM 10 Q. Was he involved helping?

09:55AM 11 A. As far as I know, I'm sure he was, but I don't know for

09:55AM 12 sure.

09:55AM 13 Q. You never saw it?

09:55AM 14 A. I never saw it.

09:55AM 15 Q. Did you form a belief that Moynihan was helping?

09:55AM 16 A. I just kind of figured because he lived there.

09:55AM 17 Q. So is that a yes?

09:55AM 18 A. Yes.

09:55AM 19 Q. Now, getting back to the truckloads, how many truckloads

09:55AM 20 of marijuana did you help Mr. Serio unload in the Buffalo

09:56AM 21 area?

09:56AM 22 A. Three.

09:56AM 23 Q. And can you estimate how much marijuana was involved in

09:56AM 24 each load?

09:56AM 25 A. 100 pounds on each load.

09:56AM 1 Q. On any of those loads that you helped unload, were there
09:56AM 2 any other types of drugs in the -- in the -- in the
09:56AM 3 concealed -- in the cover load? Sorry, couldn't find the
09:56AM 4 words.

09:56AM 5 A. Yes.

09:56AM 6 Q. What other kinds of drugs were in the cover load?

09:56AM 7 A. Fake OxyContin pills, they were fentanyl.

09:56AM 8 Q. How many of the cover loads had those fake OxyContin
09:56AM 9 pills that were fentanyl?

09:56AM 10 A. From the three I did, one.

09:56AM 11 Q. What color were those pills?

09:56AM 12 A. Bluish green.

09:56AM 13 Q. What did they look like?

09:56AM 14 A. A circle.

09:56AM 15 Q. Are they small and round?

09:56AM 16 A. Small and round, yes, sir.

09:56AM 17 Q. And blueish green in color?

09:56AM 18 A. Yeah. And they had the fake imprints of the real
09:57AM 19 OxyContin.

09:57AM 20 Q. Were those pills that Mr. Serio used and also
09:57AM 21 distributed?

09:57AM 22 A. Oh, yeah.

09:57AM 23 Q. Yes?

09:57AM 24 A. Yes, sir.

09:57AM 25 Q. Now, with respect to the three times you helped unload,

09:57AM 1 I'd like you to tell the jury what locations you unloaded the
09:57AM 2 marijuana at on each occasion, then I'm going ask you
09:57AM 3 specifically about each one.

09:57AM 4 So starting with -- what were the three locations where
09:57AM 5 you were unloading?

09:57AM 6 A. First one was at my house. The second one was Ron's
09:57AM 7 warehouse. And the last one was at Ron's house on Lebrun.

09:57AM 8 Q. Starting with your house, where -- what was your address
09:57AM 9 at the time?

09:57AM 10 A. 377 Englewood.

09:57AM 11 Q. Describe what happened on that occasion, how you became
09:57AM 12 aware that the load was coming, and what transpired.

09:57AM 13 A. Ron called me and said there was a guy coming with a
09:57AM 14 U-Haul truck. Ron came over to my house. A guy pulled up in
09:58AM 15 a U-Haul, he backed into my driveway into my backyard, and he
09:58AM 16 got out. And him and Ron talked. And us three starting
09:58AM 17 unloading the packages.

09:58AM 18 Q. Did anybody else arrive at that time?

09:58AM 19 A. In the beginning, Mike Masecchia arrived, but he was
09:58AM 20 there for about five or ten minutes, because -- my neighbor
09:58AM 21 was a convicted cocaine dealer, and I guess Mike knew him.
09:58AM 22 And Mike said that he couldn't be here in case he was seen .

09:58AM 23 Q. Who was your neighbor?

09:58AM 24 A. Remus Nowak.

09:58AM 25 Q. Now, was that a person that was part of Ron's

09:58AM 1 organization as far as you know?

09:58AM 2 A. Negative.

09:58AM 3 Q. And when Masecchia realized that you lived near Nowak, he
09:58AM 4 decided to leave?

09:58AM 5 A. He decided to leave, yes, sir.

09:58AM 6 Q. Did you interact at all with the driver of the truck?

09:59AM 7 A. Yes, I did.

09:59AM 8 Q. Where did you -- what, if anything, did you learn about
09:59AM 9 the driver of your interactions?

09:59AM 10 A. He told us -- he was an Asian guy. He told us that he
09:59AM 11 was from Philadelphia. And out of the 100 pounds, I think 30
09:59AM 12 of them were his, and he was taking those back to
09:59AM 13 Philadelphia with him.

09:59AM 14 Q. Describe how you uncovered the load at your house.

09:59AM 15 A. There was giant bags of wood pellets that are used for
09:59AM 16 wooden stoves. And when you sliced open the bag and poured
09:59AM 17 the wood pellets out, concealed in the wood pellets would be
09:59AM 18 1 pound of marijuana.

09:59AM 19 Q. And were there a lot of bags?

09:59AM 20 A. Yes, there was about 100.

09:59AM 21 Q. Where were you dumping the wood pellets?

09:59AM 22 A. In my -- I have -- I used to have an ice rink in my
10:00AM 23 backyard, and there's like a sinkhole. And so we just threw
10:00AM 24 them on the ground, and they eventually sunk into the earth.

10:00AM 25 Q. So you filled in the hole in your backyard sort of?

10:00AM 1 A. Yes, basically.

10:00AM 2 Q. And you got paid for using your house and helping unload?

10:00AM 3 A. Yes, I did.

10:00AM 4 Q. I think you said the next location was Ron's warehouse?

10:00AM 5 A. Yes, sir.

10:00AM 6 Q. Let me show you a photo, this is marked as Government

10:00AM 7 Exhibit 51A-7. This is not in evidence yet.

10:00AM 8 A. That's the warehouse.

10:00AM 9 Q. Do you -- I'm sorry, do you recognize that photo?

10:00AM 10 A. Yes, I do.

10:00AM 11 Q. What do you recognize that to be of?

10:00AM 12 A. That's Ron's warehouse.

10:00AM 13 Q. Is that the warehouse where you unloaded marijuana?

10:01AM 14 A. Yes, sir.

10:01AM 15 Q. Does it fairly and accurately depict Ron's warehouse

10:01AM 16 where you unloaded marijuana?

10:01AM 17 A. Yes, sir.

10:01AM 18 Q. And this was the second load that came into town?

10:01AM 19 A. Yes.

10:01AM 20 **MR. TRIPI:** The government offers 51A-7, Your Honor.

10:01AM 21 **MR. MacKAY:** No objection, Your Honor.

10:01AM 22 **THE COURT:** Received without objection.

10:01AM 23 **MR. TRIPI:** Thank you.

10:01AM 24 **(GOV Exhibit 51A-7 was received in evidence.)**

10:01AM 25 **MR. TRIPI:** With the Court's permission, we'll

1 publish this for the jury.

2 I'm super patient with technology, I'm sorry.

3 **BY MR. TRIPI:**

4 Q. All right. Do you recognize this location?

5 A. Yes, I do.

6 Q. What corner does this warehouse sit on?

7 A. I think Michigan.

8 Q. And we see a street sign there that says Sycamore?

9 A. Yes, sir.

10 Q. All right. And that other street that we don't see a
11 sign for, you believe to be Michigan?

12 A. Yes, I'm almost positive.

13 Q. Okay. Where -- where did you unload the marijuana? How
14 did it go?

15 A. Ron picked up a U-Haul truck, and he backed it in to
16 where the garage door is right there.

17 Q. So that door opens up?

18 A. Yes, sir.

19 Q. And once that door opened up and he backed the U-Haul in,
20 what did you guys do next?

21 A. The U-Haul was too big to be all the way backed in, so he
22 just backed it right to the face of the building. And he
23 opened up the back of it. And we cut open the box and
24 started taking all the mulch out with shovels and pics and --
25 to get to the middle of the load.

1 Q. And when you got to the middle of the load, again how
2 much marijuana was there approximately?

3 A. 100 pounds.

4 Q. And those were 1-pound bags?

5 A. Yes, sir.

6 Q. And is this the trip where there was also the fentanyl
7 pills, or do you recall?

8 A. I don't recall. I think the fentanyl pills were on the
9 last one --

10 Q. Okay.

11 A. -- if I'm not mistaken.

12 Q. Okay.

13 **MR. TRIPI:** Ms. Champoux, will you take this photo
14 down. And if we could, bring up Government Exhibit 8A at page
15 172. And I'm just going to clear this real quick.

16 **BY MR. TRIPI:**

17 Q. Mr. Falzone, do you see the address two addresses written
18 there?

19 A. I do.

20 Q. Can you read those addresses?

21 A. 608 Michigan Avenue, Buffalo, New York, 82 Sycamore
22 Street, Buffalo, New York.

23 Q. Is that the location of the warehouse we just looked at
24 in Exhibit 51A-7?

25 A. Yes, it is.

1 Q. And now you indicated earlier you became involved in 2014
2 or 2015?

3 A. Yes, sir.

4 Q. And then moved forward, correct?

5 A. Yes, sir.

6 Q. Do you see the bottom left-hand corner it says that that
7 document, that subpoena was issued on a particular day, can
8 you read that?

9 **MR. TRIPI:** Can you blow that up Ms. Champoux?

10 **THE WITNESS:** June 2013.

11 **MR. TRIPI:** Hang on one second.

12 **THE CLERK:** I'll clear it for you, Joe.

13 **THE WITNESS:** I see it. I see it.

14 **BY MR. TRIPI:**

15 Q. All right.

16 A. June 2013.

17 Q. 4th day of June, 2013?

18 A. Yes, sir.

19 Q. So, that document has a date prior to your involvement
20 with that warehouse and Mr. Serio, correct?

21 A. It does.

22 Q. So, in other words, Mr. Serio had that warehouse for a
23 long time, didn't he?

24 A. Yes, sir.

25 Q. Do you know how long he had that warehouse for?

1 A. I think, like, maybe before -- before this.

2 **MR. MacKAY:** Objection to speculation.

3 **MR. TRIPI:** He's --

4 **BY MR. TRIPI:**

5 Q. Think to yourself, and then answer out loud. Do you know
6 approximately how long Mr. Serio had?

7 A. Five to ten years before the date on this right here.

8 Q. So he had that warehouse five or ten -- going back even
9 five or ten years before the date you see on this screen?

10 A. Yes.

11 Q. And he had that all the way through when you were
12 unloading it with him, after you became involved?

13 A. Yes, sir.

14 **MR. TRIPI:** Okay. We can take that down,
15 Ms. Champoux.

16 One moment, please, Your Honor.

17 **BY MR. TRIPI:**

18 Q. So the third unloading was at, you said, his house on
19 Lebrun?

20 A. Yes, sir.

21 Q. Describe -- can you describe in detail what happens on
22 that trip and how you came to be unloading the marijuana at
23 Mr. Serio's house?

24 A. Ron and I met -- he got a phone call, we met two Canadian
25 guys at Denny's on Main Street.

10:07AM 1 Q. Is that Main and Harlem?

10:07AM 2 A. Yes, it is.

10:07AM 3 Q. And there was a Denny's that was there?

10:07AM 4 A. Yes.

10:07AM 5 Q. And did you and Ron go meet them?

10:07AM 6 A. Yes, we did.

10:07AM 7 Q. Describe the meeting.

10:07AM 8 A. I was in the car. Ron went in.

10:07AM 9 Q. Hang on, whose car were you in?

10:07AM 10 A. I was in Ronald Serio's car.

10:07AM 11 Q. So you and Ron met up, and then went to Denny's together?

10:07AM 12 A. Yes.

10:07AM 13 Q. Okay. Where did you meet up before you and he went to

10:07AM 14 Denny's?

10:07AM 15 A. At his house.

10:07AM 16 Q. That's 697 Lebrun?

10:07AM 17 A. Yes, sir.

10:07AM 18 Q. Okay. I'm going to just put that picture up on the

10:07AM 19 screen that orients you to Lebrun.

10:07AM 20 **MR. TRIPI:** Can we please publish 42A-33 in evidence

10:07AM 21 already? And can we zoom in on the photo?

10:07AM 22 **BY MR. TRIPI:**

10:07AM 23 Q. So is that Mr. -- a picture of what Mr. Serio's house

10:07AM 24 used to be?

10:07AM 25 A. Yes, sir.

10:07AM 1 Q. Okay. So you met with him there?

10:08AM 2 A. Yes.

10:08AM 3 Q. And then you and he have a discussion about going to

10:08AM 4 Denny's?

10:08AM 5 A. Yes, sir.

10:08AM 6 Q. Describe what happens from there.

10:08AM 7 A. We went to Denny's. Ron went inside, got the keys for a

10:08AM 8 U-Haul truck that was parked on the side street by Denny's.

10:08AM 9 Q. Let me stop you there. Did you go into Denny's and meet

10:08AM 10 the two Canadian guys?

10:08AM 11 A. Not until I dropped the keys back off.

10:08AM 12 Q. So you and Ron parked on a side street next to Denny's?

10:08AM 13 A. No, Ron parked in the parking lot.

10:08AM 14 Q. And then you waited in his vehicle?

10:08AM 15 A. Yes.

10:08AM 16 Q. What type of vehicle was Ron driving?

10:08AM 17 A. A Range Rover.

10:08AM 18 Q. Is that an expensive vehicle?

10:08AM 19 A. Yes.

10:08AM 20 Q. So Ron goes into the Denny's, and what happens next?

10:08AM 21 A. He told me he gave the keys to the Range Rover to the

10:08AM 22 Canadian guys, and then he got the keys to the U-Haul truck.

10:08AM 23 Q. Okay. Let me stop you there. Was there a U-Haul truck?

10:08AM 24 A. Yes.

10:08AM 25 Q. Where was the U-Haul truck?

10:08AM 1 A. On the side street next to Denny's.

10:08AM 2 Q. Okay. So there's a side street right there?

10:09AM 3 A. Yes, sir.

10:09AM 4 Q. Okay. And when Ron came out with the keys to the U-Haul
10:09AM 5 truck, what did he tell you?

10:09AM 6 A. He told me let's go.

10:09AM 7 Q. And what did you and Ron then do?

10:09AM 8 A. Jumped in the U-Haul truck.

10:09AM 9 Q. So you exited the Range Rover?

10:09AM 10 A. Yes.

10:09AM 11 Q. And you went into the U-Haul truck?

10:09AM 12 A. Yes.

10:09AM 13 **MR. MacKAY:** Judge, I'm going to object to some of
10:09AM 14 the leading.

10:09AM 15 **MR. TRIPI:** Judge, it's just foundational. I'm just
10:09AM 16 trying to develop the witness.

10:09AM 17 **THE COURT:** Yeah, it's --

10:09AM 18 **MR. TRIPI:** We can do it all day, or I can --

10:09AM 19 **THE COURT:** No, no, no, I understand. So I think
10:09AM 20 this is foundational, and so the objection is overruled. You
10:09AM 21 can continue.

10:09AM 22 You can continue your objections, though, Mr. MacKay,
10:09AM 23 when there's leading that you think is problematic.

10:09AM 24 **MR. TRIPI:** Okay.
25

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BY MR. TRIPI:

Q. Once you and Mr. Serio got into the U-Haul with the keys that Mr. Serio had, what happened next?

A. We drove back to Lebrun.

Q. To this house?

A. Yes, sir.

Q. That's depicted in 42A-33 for the record?

And describe what happened when you and Ron drove the U-Haul to Mr. Serio's house?

A. We drove to the back where the garage is.

MR. TRIPI: Could we go to one 42A-34. How about 42A-35. Okay.

BY MR. TRIPI:

Q. Does this overview show you the aerial view of that house on Lebrun?

A. Yes.

Q. And is there a garage set back?

A. Yes.

Q. Is that sort of next to the pool?

A. No. That is the garage, the garage is right there.

Q. Can you circle the pool -- I'm sorry, circle the garage for the jury? Okay. So, describe what happened when you guys got back there with the U-Haul.

A. We -- first Ron crashed into the side of the house trying to go to the back.

1 Q. Why, was the truck too big or something?

2 A. The truck was way too big.

3 Q. Okay.

4 A. So then he pulled forward, and then he ended up squeezing
5 it in, in reverse, to right directly in front of the garage.

6 Then he opened it up, and the box was so far set back,
7 that we had to take, like, pics and shovels and try to inch
8 the box towards the back of the truck until it actually fell
9 off the truck so that he could return the U-Haul truck.

10 Q. And how long did that take to get to that load off the
11 back of the truck?

12 A. Oh, at least an hour.

13 Q. So after inching the load until the point where it fell,
14 what did you do next?

15 A. Ron told me to drive the U-Haul truck back to Denny's. I
16 parked it in the same spot on the side street. I went
17 inside, I gave them their U-Haul keys and some money that Ron
18 gave me to give to them. And then I took the Range Rover
19 keys and I drove back.

20 Q. Okay. And do you recall how much money Ron provided you
21 to give to those Canadian guys?

22 A. It was around \$2,000.

23 Q. Do you know what that was for?

24 A. I think that was their cut for dropping off the U-Haul
25 truck.

1 Q. When -- when you got the Range Rover keys, did you drive
2 it back to Lebrun?

3 A. Yes, I did.

4 Q. Describe what and you Ron did next.

5 A. We opened up the box and started digging all the mulch
6 out. I particularly was putting the mulch in places around
7 his property. And we were -- as we got to the pounds of
8 marijuana, we were throwing them in his garage.

9 Q. Are there plenty of places to spread mulch around on
10 Mr. Serio's property at the time?

11 A. Yes, sir.

12 Q. Was this happening during the daytime or the nighttime?

13 A. This was during the day.

14 Q. How long did it take you in total, that whole process of
15 unloading the marijuana, spreading around the mulch?

16 A. At least five, six hours, if not longer.

17 Q. And did you get paid?

18 A. Yes, I did.

19 Q. How much did you get paid for that?

20 A. \$500.

21 Q. Now, where were the areas that you were aware of, based
22 on your participation and your discussions with Mr. Serio,
23 where he would store marijuana before he would sell it?

24 A. At one point he stored the -- we unloaded the box at the
25 warehouse. He stored those ones there.

10:14AM 1 The ones from my house, he brought to Lebrun.

10:14AM 2 Q. So this house, when you say Lebrun, okay?

10:14AM 3 A. Yes. And the ones that we unloaded on Lebrun, he brought
10:14AM 4 to the basement on Lebrun.

10:14AM 5 Q. After marijuana was stored on Lebrun, have you seen other
10:14AM 6 members of the organization arrive to pick up marijuana to
10:14AM 7 redistribute?

10:14AM 8 A. Yes, sir.

10:14AM 9 Q. Who have you seen come to marijuana -- to acquire bulk
10:15AM 10 quantities of marijuana to distribute?

10:15AM 11 A. The two people I saw that day were Mike Masecchia and
10:15AM 12 Mario Vacanti.

10:15AM 13 Q. And describe what Masecchia brought with him to obtain
10:15AM 14 the marijuana?

10:15AM 15 A. He brought a Home Depot box.

10:15AM 16 Q. Describe that box.

10:15AM 17 A. It was probably maybe 2 by 2 or 3 by 3 foot box.

10:15AM 18 Q. And approximately how many pounds did he take?

10:15AM 19 A. Around 20.

10:15AM 20 Q. And then you saw -- you said you saw Mario Vacanti come?

10:15AM 21 A. Yes.

10:15AM 22 Q. And what did, what, if anything, did he bring with him to
10:15AM 23 transport the marijuana from Serio's property to take with
10:15AM 24 him?

10:15AM 25 A. Suitcases, about this high and about this wide that had

1 wheels on the bottom. And he had two of them, and they were
2 stuffed, both.

3 Q. Now you're sitting there, so for the record I just want
4 to describe what you did. You held your hand out to your
5 side. Were you indicating about, like, waist high?

6 A. Around waist high, if not taller.

7 Q. Okay. And how wide were the bags?

8 A. About this wide. 2 feet.

9 Q. 2 feet? Okay.

10 **MR. TRIPI:** May the record reflect the witness
11 demonstrated the approximate size of the suitcases, a height
12 approximately or a little more than waist height, and 2 feet
13 wide.

14 **BY MR. TRIPI:**

15 Q. Do you know how much marijuana Vacanti took?

16 A. Not -- not in total.

17 Q. Okay. Were there ever times when you observed Anthony
18 Gerace arrive at 697 Lebrun to obtain bulk quantities of
19 marijuana?

20 A. Yes.

21 Q. When you made those observations, what, if anything, did
22 Mr. Gerace, Anthony Gerace, have with him to help him
23 transport the marijuana from the premises?

24 A. He had duffle bags or a box. Anything that he -- he
25 could use to transport the marijuana.

10:17AM 1 Q. Have you seen duffle bags in the past?

10:17AM 2 A. Yes.

10:17AM 3 Q. When you would see Anthony picking up marijuana or around

10:17AM 4 Mr. Serio's residence, have you ever seen him with a firearm?

10:17AM 5 A. Yes, sir.

10:17AM 6 Q. Do you recall what type of firearm you have seen him

10:17AM 7 with?

10:17AM 8 A. If I'm not mistaken, it was a .40 caliber.

10:17AM 9 Q. Is that a pistol?

10:17AM 10 A. Pistol, yes.

10:17AM 11 Q. Did Mr. Serio -- did Ron Serio ever tell you about other

10:17AM 12 trips he took to New York City to acquire marijuana for

10:17AM 13 distribution?

10:17AM 14 A. He told me about one.

10:17AM 15 Q. What did he say about that?

10:17AM 16 A. He said he went to New York with Mike one time to pick up

10:18AM 17 weed from the Canadians.

10:18AM 18 Q. When you say "Mike," who are you referring to?

10:18AM 19 A. Mike Masecchia.

10:18AM 20 Q. Did Mr. Serio ever tell you about other drugs that the

10:18AM 21 Canadians sent him?

10:18AM 22 A. Yes.

10:18AM 23 Q. What did he tell you?

10:18AM 24 A. He told me that they sent him some Susna, which is MDMA.

10:18AM 25 Q. MDMA?

10:18AM 1 A. Yes.

10:18AM 2 Q. Is Susna like a slang term for it?

10:18AM 3 A. I think that's what they call it in Canada.

10:18AM 4 Q. Okay. And what did Mr. Serio tell you about the MDMA?

10:18AM 5 A. Oh, well, he was just complaining, like -- I don't know
10:18AM 6 if I'm allowed to use swear words.

10:18AM 7 Q. Go ahead. Say it how he said it.

10:18AM 8 A. He said, these fucking jerk-offs sent me all this MDMA
10:18AM 9 and want me to get rid of it, and I don't want it, and I
10:18AM 10 don't have any anybody to get rid of it to.

10:18AM 11 Q. So did he tell you what he did with it?

10:19AM 12 A. I think he stored it at the warehouse.

10:19AM 13 Q. Is that the warehouse in Exhibit 51A-7 we talked about
10:19AM 14 earlier?

10:19AM 15 A. Yes, sir.

10:19AM 16 Q. The one on Sycamore?

10:19AM 17 A. Yes.

10:19AM 18 Q. So, in terms of finding sources of supply for bulk
10:19AM 19 distribution of marijuana, was Mr. Serio the focal point of
10:19AM 20 that part of the operation?

10:19AM 21 A. Yes.

10:19AM 22 Q. If he were to get in trouble, do you believe it risked
10:19AM 23 everyone getting in trouble?

10:19AM 24 **MR. MacKAY:** Objection.

10:19AM 25 **MR. TRIPI:** Do you believe it risked everyone getting

1 in trouble.

2 **MR. MacKAY:** I guess it calls for speculation on the
3 parts of others.

4 **THE COURT:** Overruled.

5 **BY MR. TRIPI:**

6 Q. You can answer. That means you can answer.

7 A. Do I believe everybody else would also get in trouble?

8 Q. Do you believe his arrest would risk other people getting
9 in trouble in the organization?

10 A. Yes.

11 Q. Now, along the way, did Mr. Serio tell you anything about
12 law enforcement protection that he had for the organization?

13 A. Yes, he did.

14 Q. What did Mr. Serio tell you?

15 A. He told me that we were protected because he was paying
16 Mike Masecchia every month to pay off Mr. Bongiovanni.

17 Q. And what did Mr. Bongiovanni do for a living?

18 A. He was a DEA agent.

19 Q. And do you know him?

20 A. No, I do not.

21 Q. Have you ever met him?

22 A. Negative.

23 Q. Do you know what he looks like?

24 A. Yes, sir.

25 Q. How do you know what he looks like?

10:20AM 1 A. Because I've seen him before.

10:20AM 2 Q. Okay. Do you see him in court?

10:20AM 3 A. Yes, I do.

10:20AM 4 Q. Can you point to him and describe something he's wearing?

10:20AM 5 A. Burgundy tie.

10:20AM 6 **MR. TRIPI:** May the record reflect that the witness

10:20AM 7 looked over and identified Mr. Bongiovanni by his tie.

10:21AM 8 **THE COURT:** It does.

10:21AM 9 **BY MR. TRIPI:**

10:21AM 10 Q. And you've seen him before?

10:21AM 11 A. Yes.

10:21AM 12 Q. Is that out in public?

10:21AM 13 A. Yeah, I've seen him in public, and I've also seen -- I
10:21AM 14 saw him at Lou Selva's benefit party.

10:21AM 15 Q. When was that benefit party?

10:21AM 16 A. I don't recall.

10:21AM 17 Q. What was the benefit party for?

10:21AM 18 A. Lou had open-heart surgery.

10:21AM 19 Q. Getting back to the conversation, we'll get to the
10:21AM 20 benefit party in a bit, what did -- what did Mr. Serio tell
10:21AM 21 you Bongiovanni would do in exchange for those payments?

10:21AM 22 A. He would let us know who to stay away from and who was
10:21AM 23 being investigated.

10:21AM 24 Q. Were you, in your conversations with Mr. Serio, Ron
10:22AM 25 Serio, were you ever given any examples of how

10:22AM 1 Mr. Bongiovanni helped other people that were involved with
10:22AM 2 Ron and this drug-trafficking organization?

10:22AM 3 A. Yeah. One time I was at Ron's house, and he got a phone
10:22AM 4 call I guess from Mike Masecchia, that Lou Selva told Mike
10:22AM 5 Masecchia that Mario Vacanti, that was living in Ron's
10:22AM 6 brother's carriage house, was being investigated by the DEA.

10:22AM 7 Q. So you learned that Mario Vacanti was under
10:22AM 8 investigation?

10:22AM 9 A. Yes, sir.

10:22AM 10 Q. Did Mr. Serio ever tell you about anything that
10:22AM 11 Bongiovanni did for Anthony Gerace?

10:22AM 12 A. Yes, sir.

10:22AM 13 Q. What did he tell you about that?

10:22AM 14 A. He told me that Anthony told him that he got caught
10:22AM 15 selling cocaine. And his brother called Bongiovanni to help
10:23AM 16 Anthony get out of trouble. And that's how basically Anthony
10:23AM 17 never got in trouble for being arrested for selling cocaine.

10:23AM 18 Q. And you, in that answer, you referenced Anthony's
10:23AM 19 brother. Who is that?

10:23AM 20 A. Peter Gerace.

10:23AM 21 Q. Now there comes a point in time in or about April of 2017
10:23AM 22 where you learn that Mr. Serio is arrested; is that correct?

10:23AM 23 A. Yes, sir.

10:23AM 24 Q. Okay. Using that as a frame of reference for a moment,
10:23AM 25 do you recall whether or not Mr. Selva's benefit for his

10:23AM 1 heart attack was before Mr. Serio was arrested or after?

10:23AM 2 A. It was before.

10:23AM 3 Q. Okay. Do you remember who you went to the benefit with?

10:23AM 4 A. I don't recall.

10:23AM 5 Q. Do you remember where the benefit was?

10:24AM 6 A. It was at the Knights of Columbus on Kenmore Avenue.

10:24AM 7 Q. Is that on the Buffalo/Kenmore border?

10:24AM 8 A. Yes.

10:24AM 9 Q. Do you remember anyone else who was there other than the

10:24AM 10 defendant?

10:24AM 11 A. Basically everybody from North Buffalo.

10:24AM 12 Q. Was Mike Masecchia there?

10:24AM 13 A. Yes.

10:24AM 14 Q. Okay. Now, I referenced it a moment ago, but Mr. Serio

10:24AM 15 was arrested in April of 2013; do you recall learning that?

10:24AM 16 A. Yes.

10:24AM 17 Q. After Mr. Serio was arrested, did you have a meeting

10:24AM 18 somewhere with Mr. Masecchia?

10:24AM 19 A. Yes, I did.

10:24AM 20 Q. Where did you meet with Mr. Masecchia?

10:24AM 21 A. Tim Horton's in the Tony Walker Plaza.

10:24AM 22 Q. Is that in Williamsville?

10:24AM 23 A. Yes, it is.

10:24AM 24 Q. How did you -- how did that meeting come about? Was it a

10:25AM 25 chance encounter? Or did you plan to meet there?

10:25AM 1 A. Mike called me and told me to meet him there.

10:25AM 2 Q. And did you do so?

10:25AM 3 A. Yes, I did.

10:25AM 4 Q. Describe what happened when you arrived at Tim Horton's
10:25AM 5 in the Walker Plaza after Mr. Serio's arrest?

10:25AM 6 A. Mike came up to me and he said, I don't know how this
10:25AM 7 happened. I talked to my guy, and Ron wasn't on any radars.

10:25AM 8 Q. How did that -- how did you get to that point of the
10:25AM 9 discussion? Were you sitting down having coffee.

10:25AM 10 A. No, we were in the parking lot.

10:25AM 11 Q. So you didn't go in?

10:25AM 12 A. We didn't go in.

10:25AM 13 Q. And what did you say?

10:25AM 14 A. I didn't say anything. I was just, like, oh.

10:25AM 15 Q. When you -- how did you first hear that Mr. Serio was
10:25AM 16 arrested?

10:25AM 17 A. His brother called me.

10:25AM 18 Q. Who's that?

10:25AM 19 A. His brother, Tom.

10:25AM 20 Q. When you learned it, did you become concerned about
10:25AM 21 Mr. Serio's arrest?

10:25AM 22 A. Yes, I did.

10:25AM 23 Q. When Mr. Masecchia said, I talked to my guy -- withdrawn.

10:26AM 24 When he said, I don't understand how this happened. I
10:26AM 25 talked to my guy, and Ron wasn't on any radars. In the

10:26AM 1 context of that conversation, did you form a belief as to who
10:26AM 2 Masecchia was referring to when he said "my guy?"
10:26AM 3 A. Yes, I did.
10:26AM 4 Q. And who did you believe Mr. Masecchia was referring to
10:26AM 5 when he referred to "my guy?"
10:26AM 6 A. Mr. Bongiovanni.
10:26AM 7 Q. Several -- without getting into what was said, several
10:26AM 8 weeks later, did you have a meeting with Masecchia and Tom
10:26AM 9 Serio at your house?
10:26AM 10 A. Yes, I did.
10:26AM 11 Q. Is that the same house we talked about earlier, 377
10:26AM 12 Englewood?
10:26AM 13 A. Yes, sir.
10:27AM 14 Q. Without getting into that discussion, as time went on,
10:27AM 15 after that, did Masecchia eventually ask you to do anything
10:27AM 16 as it related to distributing bulk marijuana?
10:27AM 17 A. Yes.
10:27AM 18 Q. How long after the meeting at your house did Masecchia
10:27AM 19 ask you to sell or distribute marijuana?
10:27AM 20 A. A couple days.
10:27AM 21 Q. How much marijuana did Masecchia ask you to see if you
10:27AM 22 could distribute?
10:27AM 23 A. He told me to try to get Ron's old guys, and to tell
10:27AM 24 them -- he brought 5 pounds to show me, to see if I could
10:27AM 25 bring it to Ron's old customers, and tell them that he can

10:28AM 1 get whatever they want.

10:28AM 2 Q. And who -- who was he asking you to approach about

10:28AM 3 further distributing the marijuana?

10:28AM 4 A. Anthony Gerace and Mario Vacanti.

10:28AM 5 Q. The same two people you've been discussing?

10:28AM 6 A. Yes.

10:28AM 7 Q. Did you agree to do that, or no?

10:28AM 8 A. No.

10:28AM 9 Q. Why not?

10:28AM 10 A. I -- my best friend just got in trouble. I wasn't trying
10:28AM 11 to get in trouble.

10:28AM 12 Q. Was there anything about -- let me withdraw it. And I'm
10:28AM 13 going to do ask you a very specific question. Try to limit
10:28AM 14 your answer to my question, okay?

10:28AM 15 By that point in time, did you believe you had any
10:28AM 16 protection anymore?

10:28AM 17 **MR. MacKAY:** Objection. Leading, Judge. And this
10:28AM 18 evokes the prior ruling.

10:28AM 19 **THE COURT:** Sustained.

10:28AM 20 **MR. TRIPI:** I'm trying to adhere to the Court's prior
10:29AM 21 ruling.

10:29AM 22 **THE COURT:** No, I understand. Sustained.

10:29AM 23 **BY MR. TRIPI:**

10:29AM 24 Q. Following the meeting at your house with Tom and Mike
10:29AM 25 Masecchia, did that meeting factor into you declining to

10:29AM 1 distribute the marijuana?

10:29AM 2 A. Yes, sir.

10:29AM 3 Q. Why?

10:29AM 4 A. Because I -- Mike told us that Ron --

10:29AM 5 Q. Without getting into fully what was said, something was

10:29AM 6 discussed there?

10:29AM 7 A. Yes, that I wasn't one of the ones that were being

10:29AM 8 protected.

10:29AM 9 Q. So, after Ron's arrested, you didn't believe you were

10:29AM 10 protected anymore?

10:29AM 11 A. Yes, sir.

10:29AM 12 Q. Okay. I'm just going to ask you about a few other people

10:30AM 13 who were close with Ron. I think you referenced earlier,

10:30AM 14 Mike Moynihan actually lived on the premises at 697 Lebrun?

10:30AM 15 A. Yes, sir.

10:30AM 16 Q. Is he someone that both you and Ron have both known for a

10:30AM 17 while?

10:30AM 18 A. Mike's been one of our best friends for more than 30

10:30AM 19 years.

10:30AM 20 Q. Do you know Mike Buttita?

10:30AM 21 A. Yes, I do.

10:30AM 22 Q. Who was that in the context of Ron's dealings, do you

10:30AM 23 know?

10:30AM 24 A. Just a minor person.

10:30AM 25 Q. Is he someone who would get marijuana?

10:30AM 1 A. Yes, once in a while.

10:30AM 2 Q. And who's Chris Baker?

10:30AM 3 A. Chris Baker is one of Tom's friends, Ron's brother's.

10:30AM 4 Q. Has he been around Ron and Tom Serio for a long time?

10:30AM 5 A. Yes, I've known Baker as long as I've known Ron and Tom.

10:31AM 6 Q. Is that 30 years or more?

10:31AM 7 A. Yes, sir.

10:31AM 8 Q. Now, during the time frame of some of these events that

10:31AM 9 we're discussing, did you have a phone number, 716-208-5678?

10:31AM 10 A. Yes, I did.

10:31AM 11 **MR. TRIPI:** Ms. Champoux, can we pull up -- you can

10:31AM 12 take this one down. Could we pull up Exhibit 8A and go to

10:31AM 13 page 325.

10:31AM 14 **BY MR. TRIPI:**

10:31AM 15 Q. Can you see that there?

10:31AM 16 A. Yes, sir.

10:31AM 17 Q. Do you see the document, what it says below account

10:31AM 18 billing address?

10:31AM 19 A. Account billing, yes.

10:31AM 20 Q. Does your name appear there?

10:32AM 21 A. Yes, it does.

10:32AM 22 Q. Does your address appear there?

10:32AM 23 A. Yes, sir.

10:32AM 24 Q. Is there a phone number associated with that?

10:32AM 25 A. Yes, sir.

10:32AM 1 Q. What's that phone number there?

10:32AM 2 A. 716-836-0583.

10:32AM 3 Q. Is that another phone number you had?

10:32AM 4 A. Yeah, that was my house phone.

10:32AM 5 Q. And was 377 Englewood Avenue your house at the time of

10:32AM 6 these events?

10:32AM 7 A. Yes, it was.

10:32AM 8 Q. At any point, did Mr. Bongiovanni ever approach you and

10:32AM 9 ask you questions about your dealings with Mr. Masecchia?

10:32AM 10 A. Negative.

10:32AM 11 Q. At any point, did Mr. Bongiovanni approach you and ask

10:32AM 12 you about your dealings with Mr. Selva?

10:32AM 13 A. Negative.

10:32AM 14 Q. Did he ever ask you about your dealings with Ron Serio?

10:32AM 15 A. Negative.

10:32AM 16 Q. Did he ever ask you about marijuana trafficking at all?

10:32AM 17 A. Negative.

10:32AM 18 Q. Did he ever ask you any questions in his capacity as a

10:32AM 19 DEA agent about any drug activity?

10:32AM 20 A. Negative.

10:32AM 21 Q. Was the first time law enforcement approached you about

10:33AM 22 any of these events late 2019 when HSI, Homeland Security

10:33AM 23 Investigation, served you a target letter?

10:33AM 24 A. Can you repeat that, please?

10:33AM 25 Q. Was the first time any law enforcement approached you

1 about these events, was that when HSI agents approached you
2 late 2019 and gave you a target letter from the U.S.
3 Attorney's Office?

4 A. Yes, sir, that was the first time.

5 **MR. TRIPI:** One moment, please, Your Honor.

6 I don't have any further direct exam, Your Honor.

7 **THE COURT:** Cross?

8 **MR. MacKAY:** Yes, Your Honor. Thank you.

9 (Cross-examination from 10:33 a.m. to 11:22 a.m.)

10 **THE COURT:** Okay. Redirect?

11 **MR. TRIPI:** Thank you, Your Honor.

12
13 **REDIRECT EXAMINATION BY MR. TRIPI:**

14 Q. Mr. Falzone, on cross-examination, you were asked a
15 little bit about sort of time frames, so I just want to go
16 back to some time frames. Okay?

17 A. Yes, sir.

18 Q. And I think you indicated when you first became involved
19 it was approximately 2014 or 2015?

20 A. Yes.

21 Q. And was the first thing you did, agree to unload
22 packages?

23 A. Yes.

24 Q. Was the first delivery to your house at 337 Englewood,
25 was that the first thing you did?

11:23AM 1 A. That was the first thing I did, yes.

11:23AM 2 Q. Okay. In proximity to when you first had the discussion
11:23AM 3 with Ron about wanting to get involved, how much time went by
11:23AM 4 before you had that first delivery to your house?

11:23AM 5 A. About a month.

11:23AM 6 Q. Okay. So, we're still in that 2014-2015 time frame?

11:23AM 7 A. Yes.

11:23AM 8 Q. Okay. Now, as I understand your testimony, the next
11:23AM 9 delivery was at the warehouse at 82 Sycamore, that photo we
11:23AM 10 saw?

11:23AM 11 A. Yes.

11:23AM 12 Q. How long after the delivery that you accepted at your
11:23AM 13 house at 337 Englewood was the instance when you helped Ron
11:23AM 14 unload the U-Haul at the warehouse?

11:24AM 15 A. Probably a month to two months.

11:24AM 16 Q. A month to two months later?

11:24AM 17 A. Yes.

11:24AM 18 Q. So was that still the 2014-2015 --

11:24AM 19 A. '15.

11:24AM 20 Q. -- time frame?

11:24AM 21 A. Yes.

11:24AM 22 Q. Okay. And then the third delivery that you talked about
11:24AM 23 where you went to the Denny's and back to Lebrun, what
11:24AM 24 approximate year -- or, withdrawn.

11:24AM 25 How long after the warehouse delivery was that delivery?

11:24AM 1 A. Another couple months maybe.

11:24AM 2 Q. Okay. So what year is it approximately?

11:24AM 3 A. I can't recall which year.

11:24AM 4 Q. It started in 2014-'15?

11:24AM 5 A. So, let's say maybe four months, maybe, later. Three

11:24AM 6 months. 2015 maybe. I -- I honestly don't remember.

11:25AM 7 Q. Okay. Were the three deliveries before you drove to

11:25AM 8 New York City?

11:25AM 9 A. Yes.

11:25AM 10 Q. Okay. So the three deliveries happen, and then the drive

11:25AM 11 with Anthony and Ron happened to New York City?

11:25AM 12 A. Yes.

11:25AM 13 Q. How long after the last delivery was the travel, the road

11:25AM 14 trip to New York City for the marijuana?

11:25AM 15 A. Well, it was summer on the last delivery to Ron's house.

11:25AM 16 And then it was winter when we went to New York City. So six

11:25AM 17 months maybe, five months.

11:25AM 18 Q. What approximate year?

11:25AM 19 A. Could have been 2016 maybe.

11:25AM 20 Q. Okay. So your best estimate is the road trip is 2016?

11:25AM 21 A. Yes.

11:25AM 22 Q. And all those things happened before Ron's arrest in

11:26AM 23 April of 2017?

11:26AM 24 A. Yes, sir.

11:26AM 25 Q. Okay. Now, you were asked some questions about

11:26AM 1 Exhibit 3541B-1, do you remember that?

11:26AM 2 A. Yes.

11:26AM 3 Q. That was an interview you gave to HSI --

11:26AM 4 A. Yes.

11:26AM 5 Q. -- on October 28th, 2019.

11:26AM 6 To complete the question, or to complete what you said

11:26AM 7 about Masecchia paying, did you also say that Masecchia would

11:26AM 8 pay Bongiovanni directly --

11:26AM 9 A. Yes.

11:26AM 10 Q. -- during that interview?

11:26AM 11 A. I also did say that, yes, correct.

11:26AM 12 Q. Now, when you became involved with Serio and you got

11:27AM 13 involved in these operations, was it important for you to not

11:27AM 14 get caught?

11:27AM 15 A. Yes.

11:27AM 16 Q. Why was it important for you to not get caught?

11:27AM 17 A. Because I would lose everything.

11:27AM 18 Q. Your family, your kids, all of it?

11:27AM 19 A. Yes.

11:27AM 20 Q. When you had your discussions with Serio about the

11:27AM 21 protection that the defendant was providing, was there any

11:27AM 22 reason that you knew of for Mr. Serio to lie to you about the

11:27AM 23 fact that you had paid protection?

11:27AM 24 **MR. MacKAY:** Objection, speculation.

11:27AM 25 **THE COURT:** Yeah, sustained.

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BY MR. TRIPI:

Q. Did you believe Mr. Serio, when he told you that he had the defendant protecting them?

A. Yes, I did.

Q. Was Mike Masecchia, as far as you understood it, making a lot of money with Ron Serio?

A. To be honest with you, I don't know how much money he was making.

Q. Was Mike Masecchia staying in a house also owned by Ron Serio?

A. Yes, he was.

Q. Where?

A. On Huntington in Williamsville.

Q. So they were selling drugs together, and he was staying in a house owned by Mr. Serio?

A. Correct.

Q. In your view, was Mr. Serio an important part of the organization so that everyone can make money?

A. Yes, sir.

Q. Now, you said on your -- during cross-examination in response to a question from Mr. MacKay regarding Mike Masecchia and Ron Serio, that they both needed each other to be honest with you; do you remember saying that?

A. Yes, I did.

Q. Can you elaborate on that? Why did Ron Serio and Mike

11:29AM 1 Masecchia both need each other?

11:29AM 2 A. Well, Ron was the supplier, and Mike was one of the

11:29AM 3 sellers. So Mike couldn't make money without Ron, and Ron

11:29AM 4 couldn't make money without Mike.

11:29AM 5 Q. As time went on, did you believe that Bongiovanni was

11:30AM 6 protecting everyone?

11:30AM 7 A. After what was told about Mario, I did believe it.

11:30AM 8 Q. Which was what?

11:30AM 9 A. That Mario was being investigated by the DEA.

11:30AM 10 Q. And was that information provided before Ron learned of

11:30AM 11 this affair between Mario and his wife Lauren?

11:30AM 12 A. Yes.

11:30AM 13 Q. That's when everyone was still getting along?

11:30AM 14 A. Correct.

11:30AM 15 Q. That's when Mario was still selling a lot of marijuana

11:30AM 16 for Ron?

11:30AM 17 A. Yes.

11:30AM 18 Q. Now, during examination by Mr. MacKay, you indicated that

11:31AM 19 after Ron's arrest, that you had confronted Lou about the

11:31AM 20 fact that the defendant was providing protection, and Lou

11:31AM 21 turned red as an apple; do you recall that?

11:31AM 22 A. Yes.

11:31AM 23 Q. Explain, what was your understanding of why Lou Selva

11:31AM 24 turned red as an apple when you told him what you knew about

11:31AM 25 Bongiovanni's protection?

11:31AM 1 A. I -- I -- I took it as I wasn't supposed to know. And
11:31AM 2 when I told him that I knew, that's why he turned red.

11:31AM 3 Q. Because you were Ron's friend, right?

11:31AM 4 A. Yes.

11:31AM 5 Q. Was the defendant's protection supposed to be a closely
11:31AM 6 held secret?

11:31AM 7 A. Yes.

11:32AM 8 Q. Is that why you think Lou turned red?

11:32AM 9 A. Yes.

11:32AM 10 Q. When you met Masecchia at Tim Horton's after Ron's
11:32AM 11 arrest, and he said -- I just want to get it right -- I don't
11:32AM 12 understand how this happened. I talked to my guy, and Ron
11:32AM 13 wasn't on any radars. Did you believe Masecchia?

11:32AM 14 **MR. MacKAY:** Objection, beyond the scope at this
11:32AM 15 point.

11:32AM 16 **THE COURT:** Sustained.

11:32AM 17 **MR. TRIPI:** Your Honor, before I move to my next
11:32AM 18 question, can we come up briefly?

11:32AM 19 **THE COURT:** Sure.

11:33AM 20 (Sidebar discussion held on the record.)

11:33AM 21 **MR. TRIPI:** Your Honor, the cross-examination, I
11:33AM 22 believe, opened the door to the full panoply of the discussion
11:33AM 23 regarding the no-fly list. The cross-examination created the
11:33AM 24 perception because initially they -- they elicited his
11:33AM 25 speculation that there might not have actually been any

1 protection. The discussion at his dining room table with Tom
2 Serio and Mike Masecchia confirms that in fact there was
3 protection, the discussion of no-fly list, and he was going to
4 be continued to be protected.

5 And so they didn't have to go as deeply as they went,
6 but they went there. And I believe that door is open now.

7 **MR. MacKAY:** Judge, I don't recall it being opened
8 that way. We didn't talk about the whole scope of what was --

9 **MR. TRIPI:** They tried, but there was no protection,
10 and he didn't believe there was protection. And then there
11 was a specific discussion at his dining room table about
12 whether he's protected or not. The jury deserves to know
13 that.

14 **THE COURT:** The witness says that he was protected --

15 **MR. TRIPI:** Judge, that sanitizes it in a way, and I
16 mean this respectfully, in a way that in the context of that
17 cross, it's not one affair. They didn't go as deeply as they
18 did to create that impression. They did a nice job on cross,
19 but I'm allowed to do a nice job on redirect to try to
20 rehabilitate it.

21 **THE COURT:** So you're saying that these questions
22 about Masecchia and Selva being thieves opened the door?

23 **MR. TRIPI:** That, in conjunction with eliciting his
24 speculation that at an earlier point there might not have been
25 any protection while later on --

11:34AM 1 **THE COURT:** But haven't you already gotten this in
11:34AM 2 the direct.

11:34AM 3 **MR. TRIPI:** I've gotten the bare minimum out, Judge,
11:34AM 4 but I don't believe that with the burden of proof the
11:34AM 5 government's entitled to just the bare minimum, and that's
11:34AM 6 where my argument lies.

11:34AM 7 **THE COURT:** So what do you want to ask him?

11:34AM 8 **MR. TRIPI:** I want to ask him about the discussion.
11:34AM 9 He's told what the no-fly list is, and who's still protected,
11:34AM 10 and who's not, and his understanding of that.

11:34AM 11 **THE COURT:** No, I think you've gotten out of him -- I
11:35AM 12 don't think that changes the fact that that discussion was not
11:35AM 13 in furtherance of the conspiracy, and I don't think that that
11:35AM 14 they opened the door in some way to that.

11:35AM 15 You've gotten out what he thought, and the fact that
11:35AM 16 he recognized that there was protection. And I think that
11:35AM 17 that's the end of discussion, so that's it.

11:35AM 18 **MR. TRIPI:** Thank you. Thanks for letting me come
11:35AM 19 up.

11:35AM 20 **THE COURT:** Of course.

11:36AM 21 (Sidebar discussion held on the record.)

11:36AM 22 **BY MR. TRIPI:**

11:36AM 23 Q. In -- by the time HSI approached you in October of 2019
11:36AM 24 with a target letter --

11:36AM 25 **MR. TRIPI:** Actually, Judge, I'm going to withdraw

that question. I have no further redirect.

THE COURT: Okay. Anything more, Mr. MacKay?

MR. MacKAY: No, Your Honor.

THE COURT: You can step down, sir. Thank you.

THE WITNESS: Thank you.

(Witness excused at 11:36 a.m.)

(Excerpt concluded at 11:36 a.m.)

* * * * *

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on March 5, 2024.

s/ Ann M. Sawyer
Ann M. Sawyer, FCRR, RPR, CRR
Official Court Reporter
U.S.D.C., W.D.N.Y.

INDEXEXCERPT OF DIRECT EXAMINATION AND RE-DIRECT EXAMINATIONOFMARK FALZONE - MARCH 5, 2024W I T N E S SP A G E

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DIRECT EXAMINATION BY MR. TRIPI (CONT'D):

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REDIRECT EXAMINATION BY MR. TRIPI:

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GOV Exhibit 51A-7

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